IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

JUDY ANN FLANAGAN
ADC #708738 PETITIONER

VS. 5:07CV00326 JTR

LARRY NORRIS, Director,
Arkansas Department of Correction RESPONDENT

ORDER

On December 30, 2009, the Court entered a Memorandum and Order (docket entry #30) and Judgment (docket entry #31) dismissing this habeas action, with prejudice. On May 17, 2010, Petitioner filed a Notice of Appeal, which the Court will also construe as a request for a Certificate of Appealability.[1]

The Antiterrorism and Effective Death Penalty Act ("AEDPA") provides that an appeal from the dismissal of a habeas action cannot be taken unless the trial court or the court of appeals grants

[1]Petitioner attempted to file her Notice directly with the Eighth Circuit Court of Appeals. On May 24, 2010, the Clerk of the Eighth Circuit forwarded Petitioner's Notice to the Clerk of the Eastern District of Arkansas, with instructions to file the Notice in this case effective May 17, 2010, when it was received at the Eighth Circuit. (Docket entry #33 at 3).

The Notice does not reference this habeas action, but states Petitioner's intent to obtain Eighth Circuit review of "the final judgment of writ of error coram nobis entered in this action on March 18, 2010." (Docket entry #33 at 1). This is a reference to the Arkansas Supreme Court's March 18, 2010 decision denying Petitioner's request to reinvest the state trial court with jurisdiction to consider a writ of error coram nobis. *See Flanagan v. State*, 2010 Ark. 140, 2010 WL 987049 (Mar. 18, 2010) (unpublished decision). Of course, Petitioner has no right to directly appeal a decision of the Arkansas Supreme Court to the Eighth Circuit Court of Appeals.

Nonetheless, the Court will liberally construe Petitioner's Notice as a request for a Certificate of Appealability of the December 30, 2009 dismissal of her habeas Petition.

the prisoner a certificate of appealability ("COA"). 28 U.S.C. § 2253(c)(1). Furthermore, in *Slack v. McDonnell*, 529 U.S. 473, 484 (2000), the Court clarified that, when a district court denies a habeas petition on the merits, a COA may be issued only if the petitioner demonstrates "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong."

In this habeas action, Petitioner argued that: (1) the trial court erred in allowing the jury, during their deliberations, to replay the taped statements she made to police; (2) one of her statements was involuntary because the police made a "false promise of reward" to induce her to make the statement; (3) police improperly questioned her after she invoked her right to counsel; and (4) the trial court erred in refusing to allow her to call Beverly Coats as a witness at trial.

Based upon well-established and controlling precedent, the Court concludes that reasonable jurists would *not* find the Court's assessment of Petitioner's constitutional claims to be debatable or wrong. Accordingly, the Court will deny Petitioner's Motion for a Certificate of Appealability. **If Petitioner wishes to appeal the Court's dismissal of her habeas action, she must obtain a certificate of appealability from the *Eighth Circuit Court of Appeals* pursuant to 28 U.S.C. § 2253(c)(1).**

Finally, Petitioner has also filed a Motion for Leave to Appeal *In Forma Pauperis.* (Docket entry #34). In support of her Motion, Petitioner has demonstrated that she does not have sufficient funds to pay the filing fee on appeal. Accordingly, the Motion will be granted.

IT IS THEREFORE ORDERED THAT:

1. Petitioner's Motion for a Certificate of Appealability (docket entry #33) is DENIED. If Petitioner wishes to appeal the Court's dismissal of her habeas action, she must obtain a certificate

of appealability from the *Eighth Circuit Court of Appeals* pursuant to 28 U.S.C. § 2253(c)(1).

2. Petitioner's Motion for Leave to Appeal *In Forma Pauperis* (docket entry #34) is GRANTED.

Dated this 26th day of May, 2010.

UNITED STATES MAGISTRATE JUDGE